SUPREME COURT OF THE UNITED STATES.

Nos. 762 and 824.—October Term, 1925.

762	Jacob Joseph Tutun, *vs.* The United States of America.	On Certificate from the United States Circuit Court of Appeals for the First Circuit.
824	Moritz Neuberger, *vs.* The United States of America.	On Certificate from the United States Circuit Court of Appeals for the Second Circuit.

[April 12, 1926.]

Mr. Justice Brandeis delivered the opinion of the Court.

These cases present, by certificate, the question whether the circuit courts of appeals have jurisdiction to review a decree or order of a federal district court denying the petition of an alien to be admitted to citizenship in the United States.

The existence of the jurisdiction was assumed by this court, without discussion, in *Ozawa* v. *United States*, 260 U. S. 178. It has been exercised by the courts of appeals in most of the circuits.[1] In the Fifth Circuit, jurisdiction was denied in *United States* v. *Dolla*, 177 Fed. 101. Although the correctness of that decision

[1] In the following cases appellate courts entertained jurisdiction over petitions for naturalization without expressly considering the existence of a right of appeal: *First Circuit:* Harmon *v.* United States, 223 Fed. 425. *Second Circuit:* United States *v.* George, 164 Fed. 45; United States *v.* Poslusny, 179 Fed. 836; United States *v.* Cohen, 179 Fed 834; United States *v.* Balsara, 180 Fed. 694; United States *v.* Fokschauer, 184 Fed. 990; Yunghauss *v.* United States, 218 Fed. 168; United States *v.* Meyer, 241 Fed. 305; United States *v.* Vogel, 262 Fed. 262. *Third Circuit:* United States *v.* Martorana, 171 Fed. 397. *Fourth Circuit:* Bessho *v.* United States, 178 Fed. 245; Dow *v.* United States, 226 Fed. 145. *Seventh Circuit:* United States *v.* Doyle, 179 Fed. 687. *Eighth Circuit:* United States *v.* Brelin, 166 Fed. 104; United States *v.* Ojala, 182 Fed. 51; United States *v.* Peterson, 182 Fed. 289; *Ninth Circuit:* United States *v.* Rodick, 162 Fed. 469. *District of Columbia:* United States *v.* Daly, 32 App. D. C. 525. See In re Centi, 217 Fed. 833.

was questioned by Judge Amidon in *United States* v. *Lenore*, 207 Fed. 865, 869, and by Judge Hough in *United States* v. *Mulvey*, 232 Fed. 513, 521-2, it has been followed in the Third Circuit and in the Eighth.[2] In the state courts judgments granting or denying petitions for naturalization have generally been held to be reviewable on appeal, like other cases.[3]

The "jurisdiction to naturalize aliens as citizens of the United States" is conferred by Act of June 29, 1906, c. 3592, § 3, 34 Stat. 596, upon the district courts, among others. Jurisdiction to review the "final decision in the district courts . . . in all cases," except as otherwise provided, was conferred by Act of March 3, 1891, c. 517, § 6, 26 Stat. 826, 828, upon circuit courts of appeals. This provision was re-enacted in Judicial Code, § 128, and by Act of February 13, 1925, c. 229, 43 Stat. 936 in § 128(a). The order granting or denying a petition for naturalization is clearly a final decision within the meaning of that section. *Ex parte Tiffany*, 252 U. S. 32. This is true, although a certificate granted may be cancelled under § 15 of the Naturalization Act, *United States* v. *Ness*, 245 U. S. 319, and a denial of the petition may not preclude another application for naturalization. *In re Pollock*, 257 Fed. 350. Compare *Salinger* v. *Loisel*, 265 U. S. 224, 230. The substantial question is whether a petition for naturalization is a case within the meaning of the Courts of Appeals Act.

The function of admitting to citizenship has been conferred exclusively upon courts continuously since the foundation of our Government. See Act of March 26, 1790, c. 3, 1 Stat. 103. The federal district courts, among others, have performed that function since the Act of January 29, 1795, c. 20, 1 Stat. 414. The constitutionality of this exercise of jurisdiction has never been ques-

[2]United States v. Neugebauer, 221 Fed. 938; Appeal of Cook, 242 Fed. 932; Marx v. United States, 276 Fed. 295. See United States v. Nopoulos, 225 Fed. 656, 659; United States v. Koopmans, 290 Fed. 545, 547; United States v. Wexler, 8 F. (2d) 880, 881.

[3]In re Fordiani, 98 Conn. 435; United States v. Hrasky, 240 Ill. 560; United States v. Gerstein, 284 Ill. 174; Ex parte Smith, 8 Blackf. 395; Dean, Petitioner, 83 Me. 489; State v. District Court, 107 Minn. 444; Ex parte Johnson, 79 Miss. 637; State v. District Court, 61 Mont. 427; State v. Judges of Inferior Court, 58 N. J. L. 97; United States v. Breen, 135 App. Div. 824; In re Karasick, 208 App. Div. 844; In re Vura, 5 Ohio App. 334; Ex parte Granstein, 1 Hill (S. C.) 141. The right of appellate review was denied in In re Wilkie, 58 Cal. App. 22; State v. Superior Court, 75 Wash. 239.

tioned. If the proceeding were not a case or controversy within the meaning of Art. III, § 2, this delegation of power upon the courts would have been invalid. *Hayburn's Case*, 2 Dall. 409; *United States* v. *Ferreira*, 13 How. 40; *Muskrat* v. *United States*, 219 U. S. 346. Whether a proceeding which results in a grant is a judicial one, does not depend upon the nature of the thing granted, but upon the nature of the proceeding which Congress has provided for securing the grant. The United States may create rights in individuals against itself and provide only an administrative remedy. *United States* v. *Babcock*, 250 U. S. 328, 331. It may provide a legal remedy, but make resort to the courts available only after all administrative remedies have been exhausted. Compare *New Orleans* v. *Paine*, 147 U. S. 261; *United States* v. *Sing Tuck*, 194 U. S. 161; *American Steel Foundries* v. *Robertson*, 262 U. S. 209. It may give to the individual the option of either an administrative or a legal remedy. Compare *Clyde* v. *United States*, 13 Wall. 38; *Chorpenning* v. *United States*, 94 U. S. 397, 399. Or it may provide only a legal remedy. Compare *Turner* v. *United States*, 248 U. S. 354. Whenever the law provides a remedy enforceable in the courts according to the regular course of legal procedure, and that remedy is pursued, there arises a case within the meaning of the Constitution, whether the subject of the litigation be property or status. A petition for naturalization is clearly a proceeding of that character.

The petitioner's claim is one arising under the Constitution and laws of the United States. The claim is presented to the court in such a form that the judicial power is capable of acting upon it. The proceeding is instituted and is conducted throughout according to the regular course of judicial procedure. The United States is always a possible adverse party. By § 11 of the Naturalization Act the full rights of a litigant are expressly reserved to it. See *In re Mudarri*, 176 Fed. 465. Its contentions are submitted to the court for adjudication. See *Smith* v. *Adams*, 130 U. S. 167, 173-174. Section 9 provides that every final hearing must be held in open court; that upon such hearing the applicant and witnesses shall be examined under oath before the court and in its presence; and that every final order must be made under the hand of the court and shall be entered in full upon the record. The judgment entered, like other judgments of a court of record,

is accepted as complete evidence of its own validity unless set aside. *Campbell* v. *Gordon,* 6 Cranch, 176; *Spratt* v. *Spratt,* 4 Pet. 393, 408. It may not be collaterally attacked. *Pintsch Compressing Co.* v. *Bergin,* 84 Fed. 140. If a certificate is procured when the prescribed qualifications have no existence in fact, it may be cancelled by suit. "It is in this respect," as stated in *Johannessen* v. *United States,* 225 U. S. 227, 238, "closely analogous to a public grant of land (Rev. Stat., § 2289, etc.), or of the exclusive right to make, use and vend a new and useful invention (Rev. Stat., § 4883, etc.)."

The opportunity to become a citizen of the United States is said to be merely a privilege and not a right. It is true that the Constitution does not confer upon aliens the right to naturalization. But it authorizes Congress to establish a uniform rule therefor. Art. I, § 8, cl. 4. The opportunity having been conferred by the Naturalization Act, there is a statutory right in the alien to submit his petition and evidence to a court, to have that tribunal pass upon them, and, if the requisite facts are established, to receive the certificate. See *United States* v. *Shanahan,* 232 Fed. 169, 171. There is, of course, no "right to naturalization unless all statutory requirements are complied with." *United States* v. *Ginsberg,* 243 U. S. 472, 475; *Luria* v. *United States,* 231 U. S. 9, 22. The applicant for citizenship, like other suitors who institute proceedings in a court of justice to secure the determination of an asserted right, must allege in his petition the fulfilment of all conditions upon the existence of which the alleged right is made dependent; and he must establish these allegations by competent evidence to the satisfaction of the court. *In re Bodek,* 63 Fed. 813, 814, 815; *In re an Alien,* 7 Hill (N. Y.) 137. In passing upon the application the court exercises judicial judgment. It does not confer or withhold a favor.

The Government contends that, at all events, a naturalization proceeding is not a case within the meaning of the Court of Appeals Act. The same phrase may, of course, have different meanings when used in different connections. *Lamar* v. *United States,* 240 U. S. 60, 65. The Constitution does not require that a litigant be afforded the opportunity of having every judicial decision reviewed by an appellate court. Compare *Rogers* v. *Peck,* 199 U. S. 425, 435. But the Court of Appeals Act conferred upon that court

appellate jurisdiction of final decisions of the district courts "in all cases" except those for which it provided a direct review by this Court. See *Lou Ow Bew* v. *United States*, 144 U. S. 47, 57; *The Paquete Habana*, 175 U. S. 677, 683-686. A denial of a review in naturalization cases would engraft an exception upon an otherwise universal rule. Compare *Craig* v. *Hecht*, 263 U. S. 255, 274-276; *In re Graves*, 270 Fed 181. There is nothing in that Act, which should limit the application of the all-embracing language used.

It is argued that the Naturalization Act denies appellate jurisdiction, since § 3 declares that "exclusive jurisdiction to naturalize aliens as citizens" is conferred upon the federal and state courts there specified, and these do not include the circuit courts of appeals. The term "exclusive" was used in § 3 in order to withdraw the jurisdiction which minor state courts, being courts of record, had exercised under the authority conferred by earlier naturalization statutes. See House Doc. No. 46, 59th Cong., 1st sess., Ser. No. 4984, pp. 18-24. The section makes no reference to appellate proceedings. It is also argued that Congress manifested the intention of denying the usual method of appellate review by providing in § 15 for a bill in equity to cancel certificates of citizenship. The remedy afforded to the Government by § 15 is narrower in scope than the review commonly afforded by appellate courts. Moreover, there is no corresponding provision which would afford to the applicant for citizenship an independent remedy for correcting errors committed in the district court.

Since the adoption of the Constitution, Congress has by its legislation sought to promote the naturalization of qualified resident aliens. The Act of 1906 did not introduce any change in policy. It did change, in some respects, the qualifications. And to carry out the established policy through more effective application of the law, it made changes in administrative and judicial machinery. That end is subserved by the correction of errors of the trial court through appellate review. Neither *United States* v. *Ness*, 245 U. S. 319, 326, nor the history of the legislation there referred to, leads to a denial of appellate review. In that case attention was called to the fact that Congress had not provided in the Act of 1906 for an appeal from judgments of the state courts admitting aliens to citizenship. The question under discussion was whether a judgment of naturalization entered by a state court barred as *res*

judicata a proceeding brought in a federal court under § 15 to cancel the certificate of naturalization.

To the questions asked in the two cases, we answer that the Circuit Court of Appeals has jurisdiction to review by appeal the order or decree of the District Court denying the petition to be admitted to citizenship in the United States.

A true copy.

Test:

Clerk, Supreme Court, U. S.